

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 CARL J. KUNASEK

4 Chairman

5 JIM IRVIN

Commissioner

6 WILLIAM A. MUNDELL

Commissioner

7 In the matter of)

DOCKET NO. S-03389A-00-0000

8 TUCSON ESTATE FINANCIAL ADVISORS,)
9 INC.,)

**NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER FOR RELIEF**

10 an Arizona corporation)

11 3049-A S. Kinney Road)

12 Tucson, Arizona 85713)

JAMES R. KINION, II)

6655 N. Canyon Crest Drive, #7139)

Tucson, Arizona 85750)

Respondents.)

13 **NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

14 For its proposed order for relief, the Securities Division (the "Division") of the Arizona Corporation
15 Commission (the "Commission") alleges that respondents, singularly and in concert, have engaged in acts,
16 practices and transactions, which constitute violations of A.R.S. § 44-1801 *et seq.*, the Securities Act of
17 Arizona (the "Securities Act").

18 The Division alleges as follows:

19 **I.**

20 **JURISDICTION**

21 1. The Commission has jurisdiction over these matters pursuant to Article XV of the Arizona
22 Constitution and the Securities Act.
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II.

RESPONDENTS

2. TUCSON ESTATE FINANCIAL ADVISORS, INC. ("TEFA") is an Arizona corporation located at 3049-A S. Kinney Road, Tucson, Arizona 85713.

3. JAMES R. KINION, II ("KINION"), whose last known address is 6655 N. Canyon Crest Drive, #7139, Tucson, Arizona 85750, is the president of TEFA.

4. The respondents may be collectively referred to as "RESPONDENTS."

III.

FACTS

5. Each of the preceding paragraphs is incorporated by reference.

6. RESPONDENTS have engaged in the offer or sale within or from Arizona of securities in the form of promissory notes or investment contracts to the general public.

7. KINION is licensed in Arizona to sell insurance and real estate.

8. Beginning in or about June 1998, RESPONDENTS offered to sell securities, in the form of promissory notes or investment contracts to Arizona investors, on behalf of the following corporations:

a) Apogenics, Inc.

b) Caffè Diva Group Ltd. ("Caffè Diva")

c) Corlogic Corp.

d) Digizap Technologies LLC

e) Pacific Air Transport, Inc. ("Pacific Air")

f) Redbank Petroleum, Inc. ("Redbank")

g) Sebastian International Entertainment, Inc. ("Sebastian")

1 h) Technical Support Services, Inc. ("TSSP")

2 i) World Vision Entertainment, Inc. ("World Vision")

3 9. RESPONDENTS sold 41 promissory notes for the above companies to 16 Arizona
4 investors, for a total investment of approximately \$1,176,084.62. RESPONDENTS received commissions
5 ranging from nine to thirteen percent, totaling approximately \$109,121.71.
6

7 10. All notes were for a nine-month period. Interest on the notes ranged from ten percent to
8 thirteen percent. As of this date, some of the notes have been paid off, but the majority are past due. Thus,
9 the majority of the investors have not received a return of their principal from their investments with the
10 companies.
11

12 11. The notes were allegedly guaranteed by an insurance company bond. Investors were told that
13 the bond guaranteed that the note would be paid off if the company did not make the required payment.
14 Investors were told that the notes were safe and fully bonded. However, to date no investor has received any
15 payment from any insurance bond, even though the notes are past due. The insurance companies backing the
16 notes from the nine companies were Global Insurance Company, Ltd., located in Costa Rica and New
17 England International Surety Inc. ("NEIS"), located in Belgium.
18

19 12. RESPONDENTS did not inform investors that the promissory notes were not registered as
20 securities in Arizona or exempt from registration, failed to fully disclose the financial incentives of up to thirteen
21 percent commissions that they received for selling the promissory notes and failed to provide full disclosure
22 regarding the investment including risk, disclosure statements, prospectuses or financial statements.
23

24 13. RESPONDENTS did not inform the investors in Redbank that at the time of their investment,
25 the president of Redbank was the subject of a cease and desist order issued by the State of Maryland for
26 securities fraud and was under order to repay approximately \$2,000,000 to Maryland investors.

15. RESPONDENTS did not inform the investors in World Vision that prior to their investment, the State of Pennsylvania had issued a cease and desist order against World Vision ordering it to stop the offer and sale of unregistered securities.

17. Subsequent to the last Sebastian investment, on August 19, 1999, the SEC sued the principals of Sebastian International Entertainment, Inc. for securities fraud, in operating Sebastian as a Ponzi scheme. A receiver was appointed to operate Sebastian.

19. Subsequently to the last investment, other states have issued orders against Pacific Air, World Vision, Sebastian, Caffè Diva, TSSI and NEISI for the sale of unregistered securities.

VIOLATION OF A.R.S. § 44-1841

20. Each of the preceding paragraphs is incorporated by reference.

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22. The securities referred to above were not registered under A.R.S. §§ 44-1871 through 44-1875, or 44-1891 through 44-1902; were not securities for which a notice filing has been made under A.R.S. § 44-3321; were not exempt under A.R.S. §§ 44-1843 or 44-1843.01; were not offered or sold in exempt transactions under A.R.S. § 44-1844; and were not exempt under any rule or order promulgated by the Commission.

23. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers and Salesmen)

24. Each of the preceding paragraphs is incorporated by reference.

25. In connection with the offers to sell and the sale of securities, RESPONDENTS acted as dealers and/or salesmen within and/or from Arizona, although not registered pursuant to the provisions of Article 9 of the Securities Act.

26. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer and Sale of Securities)

27. Each of the preceding paragraphs is incorporated by reference.

28. In connection with the offers and sales of securities within and/or from Arizona, RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited to, the following:

- a) Failing to inform investors that the promissory notes were not registered as securities in Arizona and were not exempt from registration;
- b) Failing to fully disclose the financial incentives of up to thirteen percent commissions that they received for selling the promissory notes;
- c) Failing to provide full disclosure regarding the investment including risk, disclosure statements, prospectuses or financial statements;
- d) Failing to inform the Redbank investors that at the time of their investment, the president of Redbank was the subject of a cease and desist order issued by the State of Maryland for securities fraud and was under order to repay approximately \$2,000,000 to Maryland investors;
- e) Failing to inform the Sebastian investors that at the time of their investment, Sebastian was the subject of a cease and desist order issued by the State of Pennsylvania; and
- f) Failing to inform the World Vision investors that at the time of their investment, World Vision was the subject of a cease and desist order issued by the State of Pennsylvania.

29. This conduct violates A.R.S. § 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief against each respondent:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;
2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from their acts, practices or transactions, including without limitation a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order RESPONDENTS to pay the state of Arizona an administrative penalty of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036; and
4. Order any other relief that the Commission deems appropriate and authorized by law.

VIII.**HEARING OPPORTUNITY**

In accordance with A.R.S. §§ 44-1972 and A.A.C. R14-4-306, RESPONDENTS are notified that each respondent is afforded an opportunity for a hearing only by filing a written request for a hearing and cover sheet with Docket Control, Arizona Corporation Commission, 1200 West Washington Street, Phoenix, Arizona 85007, within 10 days after service of this Notice. RESPONDENTS are further notified that a cover sheet must accompany all filings. Failure to use the cover sheet may result in the delay of processing or the refusal to accept documents. RESPONDENTS may obtain a copy of the cover sheet by calling Docket Control at (602) 542-3477.

The date set for the hearing shall be within 15 to 30 days after the request for the hearing has been docketed, unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. Any respondent who does not request a hearing within the time prescribed is subject to the Commission issuing an order against that respondent containing such relief as the Commission deems appropriate, including but not limited to the relief requested above.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Cynthia Mercurio-Sandoval, ADA Coordinator, voice phone number 602/542-0838, e-mail csandoval@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

Dated this _____ day of March, 2000

Mark Sendrow
Director of Securities